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In The

Supreme Court of the United States

October Term 1974

No. 74-886

SALVATORE THOMAS BADALAMENTE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY AND SUPPLEMENTAL BRIEF FOR PETITIONER

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Petitioner Salvatore Thomas Badalamente replies to the answering memorandum of the government, and in addition incorporates a supplemental matter. Rule 24(5).

The opinion of the Court of Appeals is now reported at 507 F.2d 12.

In its answering memorandum the Solicitor General concedes that there is a split of authority among the circuits with

regard to the applicable standard of law to be used in assessing the claim of ineffective assistance of counsel at a trial (Government's Memorandum, p. 4; also footnote 3). The government quickly brushes aside the split of authority by stating that the attorney representation in our case would have met the differing standard utilized by the District of Columbia Circuit in *De Coster*, 487 F.2d at 1202. Obviously we do not know that, for the Second Circuit applied its own standard, and not that of the District of Columbia Circuit. Furthermore, in *De Coster*, the District of Columbia Circuit stated that:

> "A defendant is entitled to the reasonably competent assistance of an attorney acting as his diligent conscientious advocate." 487 F.2d at 1202.

In our case we claim that there was a conflict of interest. The claim of conflict of interest conflicts with the standard of a "diligent conscientious advocate" (487 F.2d at 1202). As such the admitted conflict of authority between the circuits cannot just be brushed aside. The split is real, and should be resolved by this Court.

In addition, as a supplement, we contest the authority of the Strike Force of the Department of Justice to prosecute this indictment. Just last month in *United States v. Crispino*, 74 CR 932-SDNY (2/13/75), District Judge Henry Werker held in a lengthy opinion that the letters of authorization to the many Strike Force attorneys just did not comply with the requirements of 28 U.S.C. §515(a). As such he dismissed an indictment which had been secured by a Strike Force attorney.

Since that day, countless district judges in both the Southern and Eastern Districts of New York have written on this subject, with regard to motions of various defendants to dismiss indictments or quash grand jury subpoenas. Just last week (March 19th) the Court of Appeals for the Second Circuit heard argument on this issue in the matter of *Alphonse Persico*, Docket 75-2030. It is to be expected that the Second Circuit will resolve this issue promptly. In the meantime, in order to protect our position, we include this issue as one ultimately to be resolved by this Court.

Respectfully submitted,

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